

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Jan 21, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

BARBARA BERG,

Plaintiff,

v.

THE LINCOLN NATIONAL LIFE  
INSURANCE COMPANY,

Defendant.

No. 2:24-CV-00097-SAB

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

On December 12, 2024, the Court held a motion hearing in this matter in Spokane, Washington. Plaintiff was represented by Robert Rosati. Defendant was represented by Kristina Holmstrom.

At the hearing, the Court considered Plaintiff's Motion for Declaratory Judgment, ECF No. 27. This action is brought under Section 502(a) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a), and asks the Court to review de novo the administrative record regarding Plaintiff's entitlement to benefits.

After reviewing the briefs, administrative record, caselaw, and considering the oral arguments, the Court finds Plaintiff is disabled and cannot perform any occupation as defined by Defendant's policy, which qualifies her for long term benefits. As such, the Court **grants** Plaintiff's motion.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW ~ 1**

## **STANDARD OF REVIEW**

ERISA, 29 U.S.C. § 1001 *et seq.*, was “enacted to promote the interests of employees and their beneficiaries in employee benefit plans and to protect contractually defined benefits.” *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 113 (1989) (citations omitted). The Ninth Circuit has “repeatedly stated that ERISA is remedial legislation that should be construed liberally to protect participants in employee benefit plans.” *LeGras v. AETNA Life Ins. Co.*, 786 F.3d 1233, 1236 (9th Cir. 2015) (citations omitted).

Under Section 502(a) of ERISA, 29 U.S.C. § 1132(a)(1):

A civil action may be brought—

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

Every ERISA employee benefit plan shall “provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant.” 29 U.S.C. § 1133(1). To start, the claim denial must contain, under 29 C.F.R. § 2560.503-1(g)(1):

(i) The specific reason or reasons for the adverse determination;

(ii) Reference to the specific plan provisions on which the determination is based;

(iii) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary;

(iv) A description of the plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under section 502(a) of the Act following an adverse benefit determination on review;

For an adverse determination based on a group health plan, the denial must also contain the internal rule, guideline or protocol followed, or an explanation of the scientific or clinical judgment. *See id.* For an adverse determination based on disability benefits, the denial must contain a discussion of the basis for disagreeing with:

(i) The views presented by the claimant to the plan of health care professionals treating the claimant and vocational professionals who evaluated the claimant;

(ii) The views of medical or vocational experts whose advice was obtained on behalf of the plan in connection with a claimant's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination; and

(iii) A disability determination regarding the claimant presented by the claimant to the plan made by the Social Security Administration;

*See id.* After denial, the claimant is entitled to a “full and fair review” from the plan administrator on appeal. 29 U.S.C. § 1133(2); 29 C.F.R. § 2560.503–1(h)(4). If the plan administrator denies the appeal, then claimant may seek review in federal court. 29 U.S.C. § 1132(a)(1)(B).

District courts review the administrative record and ERISA benefits claims de novo. *See Collier v. Lincoln Life Assurance Co. of Boston*, 53 F.4th 1180, 1182 (9th Cir. 2022). An ERISA review is done through a bench trial on the

1 administrative record. *See Kearney v. Standard Ins. Co.*, 175 F.3d 1084, 1094–95  
2 (9th Cir. 1999) (en banc). The administrator’s conclusions do not receive  
3 deference. *See Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955, 963 (9th Cir.  
4 2006) (en banc). However, “the district court must examine only the rationales the  
5 plan administrator relied on in denying benefits and cannot adopt new rationales  
6 that the claimant had no opportunity to respond to during the administrative  
7 process.” *Collier*, 53 F.4th at 1182.

8       The Ninth Circuit disapproves of new arguments made by a plan  
9 administrator during litigation, which protects the plaintiff claimant from being  
10 “sandbagged” with a new review. *Harlick v. Blue Shield of California*, 686 F.3d  
11 699, 719–21 (9th Cir. 2012); *see also Wolf v. Life Ins. Co. of N. Am.*, 46 F.4th 979,  
12 982 (9th Cir. 2022). But the plaintiff still bears the burden of proof. *See Muniz v.*  
13 *Amec Const. Mgmt.*, 623 F.3d 1290, 1294 (9th Cir. 2010).

14       Fed. R. Civ. P. 52(a) requires a court issue findings of fact and conclusions  
15 of law for an ERISA review. If a district court finds a plan administrator has acted  
16 arbitrarily or capricious in denying a claim for benefits, the court can either (1)  
17 remand to the plan administrator for a renewed evaluation, or (2) award a  
18 retroactive reinstatement of benefits. *See Demer*, 835 F.3d at 907. A retroactive  
19 award of benefits must be supported by the administrative record. *See id.*

## 20                   **SUMMARY OF THE ADMINISTRATIVE RECORD**

21       This case was filed in U.S. District Court for the Eastern District of  
22 Washington on March 27, 2024. Pursuant to ERISA, 29 U.S.C. § 1132(a)(1),  
23 Plaintiff claims Defendant wrongfully denied her long-term disability (“LTD”)  
24 benefits under her Group Disability Income Policy (“the Policy”) issued to her as  
25 an employee of Walmart Inc. and member of the Walmart Inc. Associates Health  
26 and Welfare Plan. She seeks declaratory judgment against Defendant, which would  
27 require Defendant to reinstate her LTD benefits under the terms of the Policy for  
28 the period under which Plaintiff is entitled such benefits; pre-judgment interest for

1 the unpaid benefits; and attorney's fees and costs.

2 The Policy provides, in relevant part:

3  
4 A. "Disability" or "Disabled", with respect to Long Term Disability,  
5 means: For persons other than truck drivers, pilots, copilots, and  
6 crewmembers of an aircraft:

- 7 i. that during the Elimination Period and the next 24 months of  
8 Disability the Covered Person, as a result of Injury or Sickness,  
9 is unable to perform the Material and Substantial Duties of his  
10 Own Occupation; and  
11 ii. thereafter, the Covered Person is unable to perform, with  
12 reasonable continuity, the Material and Substantial Duties of  
13 Any Occupation.

14 B. "Material and Substantial Duties", with respect to Long Term  
15 Disability, means responsibilities that are normally required to perform  
16 the Covered Person's Own Occupation, or any other occupation, and  
17 cannot be reasonably eliminated or modified.

18 C. "Own Occupation", with respect to Long Term Disability, means the  
19 Covered Person's occupation that he was performing when his  
20 Disability or Partial Disability began. For the purposes of determining  
21 Disability under this policy, Lincoln will consider the Covered Person's  
22 occupation as it is performed at Walmart, Inc.

23 D. "Any Occupation" means any occupation that the Covered Person is  
24 or becomes reasonably fitted by training, education, experience, age,  
25 physical and mental capacity.

26 Plaintiff was an employee with Walmart from May 2003 to June 28, 2022,  
27 and most recently as a team lead. On March 8, 2021, she became disabled in her  
right hand and forearm after a diagnosis of De Quervain's tenosynovitis of her  
right radial styloid; complication from surgery on the hand with residual lesions on  
the ulnar nerve; calcific tendinitis of her forearm; neuralgia/neuritis; idiopathic  
progressive neuropathy; complex regional pain syndrome/paresthesia; and cervical  
spine problems in the form of degenerative disc disease.

28 On August 19, 2021, Plaintiff submitted her claim to Defendant and noted

1 she could sit, stand, and walk but was limited on driving and activities that  
2 required the use of her right, dominant hand. On November 1, 2021, Defendant  
3 obtained a peer review of Plaintiff's records and diagnosis from Dr. Michael Lin, a  
4 Board Certified doctor of internal medicine. He indicated Plaintiff should only use  
5 her right hand occasionally and lightly.

6 On November 6, 2021, Defendant approved Plaintiff's claim for LTD  
7 benefits, which started on September 6, 2021, following the 26-week elimination  
8 period after her injury on March 8, 2021.

9 On December 5, 2022, Defendant used the services of Dr. Soloman Rojhani,  
10 a Board Certified doctor of physical medicine and rehabilitation and pain  
11 medicine, to review Plaintiff's records. After reviewing her records, including from  
12 the surgery and post-operation therapy and pain management care, he concluded  
13 that she consistently reported pain, weakness, and tingling in her right hand but  
14 that she could work full time.

15 On January 12, 2023, Plaintiff sent Defendant an Activities Questionnaire  
16 with supporting documents explaining her physical limitations. She noted she can  
17 no longer grasp with her right hand or move her wrist without a burning, aching,  
18 stiffness, or stinging sensation. This pain worsens throughout the day. She noted  
19 that a good day included light housework with her left hand and a nap around 2  
20 p.m. due to tiredness.

21 On June 16, 2023, Plaintiff's primary care physician Dr. Barry Bacon  
22 responded to a questionnaire regarding Plaintiff and provided by Defendant. He  
23 reported Plaintiff suffered nerve damage in her right hand and forearm and that he  
24 was treating her for the conditions causing her "permanent disability," as listed  
25 above. He noted that Plaintiff's description of her limitations and the pain were  
26 consistent with his examination and treatment history. She was not to spend more  
27 than four hours on her feet in an eight-hour workday. Her disability impacted her  
28 ability to lift or grasp with her right hand and forearm, limiting her injured right

1 hand to 20 minutes of use with a 180-minute break to follow. She could not grasp,  
2 turn, or twist objects or engage in fine manipulation with her right hand and  
3 forearm. Her left hand and forearm were fully operational. Also, she would likely  
4 miss more than four days per month at work because of the pain. He described  
5 Plaintiff's attempts to treat or mitigate her symptoms, including through pain  
6 management medication, physical therapy, creams, and occupational therapy.

7 On June 19, 2023, Defendant used the services of Dr. William Barreto, a  
8 Board Certified doctor of physical medicine and rehabilitation and pain medicine,  
9 to review Plaintiff's medical records. His referenced records included those from  
10 before April 2022 and did not include Dr. Bacon's questionnaire. He reported  
11 Plaintiff had consistently described her pain since the surgery, that the symptoms  
12 would be permanent, and that he did not think she was embellishing her  
13 description of her pain or limitations. He thought she could return to work full time  
14 with restrictions.

15 On July 5, 2023, Defendant's employee Rebecca Bach, conducted a  
16 transferable skills analysis based on Dr. Barreto's records. The review found  
17 Plaintiff could perform sedentary office jobs, including work as a customer service  
18 representative supervisor or information clerk.

19 Also on July 5, 2023, the Social Security Administration ("SSA") granted  
20 Defendant disability status and declared her disabled as of March 8, 2021, and as  
21 defined under the Social Security Act, 20 C.F.R. § 404.1520(g). In his ruling,  
22 Administrative Law Judge John Rolph found "claimant's allegations [] consistent  
23 with and supported by the medical evidence in the record." Further, the SSA  
24 decision stated, "I asked the vocational expert whether jobs exist in the national  
25 economy for an individual with the claimant's age, education, work experience,  
26 and residual functional capacity. The vocational expert testified that given all of  
27 these factors there are no jobs in the national economy that the individual could  
28 perform." Finally, in reviewing the findings by Plaintiff's surgeon that her pain

1 was unusual, Judge Rolph concluded:

2  
3 That procedure took place in March 2021, and while her surgeon found  
4 her complaints unusual, the claimant continued to report a burning  
5 sensation on the dorsal aspect of her thumb, index, and long finger that  
6 got worse with use, 14 weeks later []. Although this provider stated he  
7 was unable to identify any objective anatomic abnormalities or any  
8 reason that the claimant should not be able to use her hand normally  
9 with the longitudinal record as a whole, as well as his own findings of  
10 ongoing tenderness and weakness, despite treatment [], I find Dr.  
11 Bacon's conclusions persuasive.

12  
13 On July 14, 2023, Defendant notified Plaintiff by letter that after reviewing  
14 her claim and medical information, her LTD benefits would end on September 6,  
15 2023. It based its decision on Dr. Barreto's June 19, 2023, records and Ms. Bach's  
16 July 5, 2023, skills analysis. It did not discuss the SSA decision. The letter noted  
17 Plaintiff's right to request a review of Defendant's decision, which she exercised  
18 on August 25, 2023.

19 On July 15, 2023, the SSA sent Plaintiff her Notice of Award for the start of  
20 her Social Security benefits.

21 On July 25, 2023, Defendant received notification Plaintiff had received an  
22 award of Social Security benefits retroactively. Defendant then sent Plaintiff a  
23 demand for repayment of \$28,852.85 for what was double covered by Social  
24 Security from 2021 to 2023. Plaintiff repaid the amount in full.

25 On September 8, 2023, Defendant received a records review of Plaintiff's  
26 diagnosis and condition from Dr. Annie Layno-Moses, a Board Certified doctor of  
27 physical medicine and rehabilitation and pain medicine. She did not address the  
28 SSA decision. Her report included a timeline review of Plaintiff's diagnosis and  
care with Dr. Bacon, including his responses to Defendant's questionnaire on June  
16, 2023. Dr. Layno-Moses found:

1 Based on the medical records provided, the claimant has complaints of  
2 RUE pain, numbness, and tingling that started following her right first  
3 dorsal compartment release due to right first dorsal compartment  
4 stenosing tenosynovitis on 03/08/2021. She has an MRI of the cervical  
5 demonstrating mild to moderate multilevel degenerative disc disease,  
6 moderate facet arthropathy of the cervical spine, moderate to severe  
7 foraminal stenosis at C3-4, C4-5, C5-6, and C6-7, and thyroglossal duct  
8 cyst measuring 1.0 x 1.9 x 2.7 cm. She has normal EMG/NCVS along  
9 with an x-ray and MRI of the right forearm. She has been treated with  
10 multiple conservative therapies including PT, OT, nerve blocks, steroid  
11 injections, and oral pain medications. However, she has persistent pain  
12 complaints. Multiple visits noted normal physical exams but was also  
13 noted to have decreased grip strength on some visits, however, given  
14 the claimant's imaging findings suggestive of cervical pathology, the  
15 claimant is impaired. Therefore, restrictions and limitations are  
16 indicated.

17 Sitting: Unrestricted  
18 Standing: Frequently  
19 Walking: Frequently  
20 Lifting: Occasionally, up to 20 lbs. BUE  
21 Carrying: Occasionally, up to 20 lbs. BUE  
22 Pushing: Occasionally, up to 20 lbs. BUE  
23 Pulling: Occasionally, up to 20 lbs. BUE  
Climbing stairs: Occasionally  
Balancing: Occasionally  
Stooping: Occasionally  
Kneeling: Occasionally  
Crouching: Occasionally  
Crawling: Occasionally  
Reaching: Occasionally, overhead and below waist levels RUE;  
Unrestricted, to desk level BUE;  
Frequently overhead and below waist levels LUE  
Use lower extremities for foot controls: Unrestricted BLE  
Fine manipulation: Occasionally RUE, Unrestricted LUE  
Simple and firm grasping: Occasionally RUE, Unrestricted LUE

24 The above recommended restrictions and limitations are indicated from  
25 09/06/2023 to present and ongoing, with reassessment on or around  
03/04/2024.

26 The claimant's abilities are sustainable on a full-time basis.  
27  
28

1 Dr. Layno-Moses' questionnaire noted no records of restrictions or  
2 limitations from Plaintiff's providers, despite her referencing Dr. Bacon's June 16,  
3 2023, questionnaire indicating Plaintiff should not work more than 20 minutes with  
4 her right hand before a 180-minute break, and that she should not be on her feet  
5 more than four hours in an eight-hour workday.

6 On September 12, 2023, Defendant received a vocational memorandum  
7 review from Defendant's employee Jason Miller, which assessed jobs Plaintiff  
8 could perform with her limitations. It considered Dr. Layno-Moses' report but did  
9 not consider the SSA decision. Mr. Miller found Plaintiff could perform  
10 occupations including: surveillance system monitor with a wage of \$1,384 per  
11 month; gate guard at \$1,337 per month; or information clerk at \$1,307 per month.

12 On September 18, 2023, Plaintiff sent Defendant Dr. Bacon's reports and the  
13 SSA decision, again. In a September 27, 2023, email, she also indicated Dr. Bacon  
14 had tried returning Defendant's calls to set up a peer-to-peer review, without  
15 success. Defendant then sent more records to Dr. Layno-Moses but the following  
16 October 10, 2023, addendum to the report did not change her analysis. It did not  
17 include a conversation with Dr. Bacon or the SSA decision.

18 On November 3, 2023, Defendant denied Plaintiff's appeal of the  
19 termination of her LTD benefits. Defendant noted its consideration of the SSA  
20 decision:

21  
22 It is important to clarify the existence of a medical condition/diagnosis  
23 in and of itself does not equate to eligibility for disability benefits. The  
24 focus of our assessment was not whether or not a condition exists; but  
rather whether or not impairment exists that would preclude you from  
performing the duties of any occupation.

25 Based on our review, which included independent reviews we conclude  
26 the information is insufficient to support evidence of continued  
impairment.  
27

28 We are aware and fully considered the Social Security Administration's

(SSA) ruling to approve your Social Security Disability Income benefit beginning September 2021 relative to your disability under their rules beginning September 2021. However, an award of Social Security Benefits is not determinative of entitlement to benefits under the specific terms and conditions of the Walmart Inc's Group Disability Income Policy. We also requested and obtained update medical and vocational information and conducted an independent review of this information. Nevertheless, our determination is based upon updated medical records and different medical and vocational information that would not have been considered by the SSA in September 2021.

### Conclusion

We conducted a thorough and independent reviews of your entire acknowledge that you may have continued to experience some symptoms associated with your condition beyond September 5, 2023. However, the information does not contain significant physical exam findings, diagnostic test results or other forms of medical documentation supporting your impairments and symptoms remained of such severity, frequency and duration that they resulted in restrictions or limitations rendering you unable to perform the duties of your occupation after that date. Having carefully considered all of the information submitted in support of your claim, our position remains that proof of your continued disability in accordance with the Policy provisions after September 5, 2023 has not been provided. Therefore, no further benefits are payable.

This claim decision reflects an evaluation of the claim facts and Policy provisions.

Defendant relied on the policy definition that required Plaintiff not be able to perform the "material and substantial duties" of "any occupation" with reasonable continuity, concluding that she could hold a job despite her disability.

In the present action, Plaintiff now argues Defendant failed to provide a full and fair review of her claim, as required by ERISA, 29 U.S.C. § 1133(2); 29 C.F.R. § 2560.503–1(h)(4), because Defendant did not provide verification of her claim review and that procedure was followed consistently as applied to similarly situated claimants; Defendant did not provide a description of what additional material would be needed to perfect the claim; Defendant did not meaningfully

1 consider Plaintiff's appeal and SSA Decision; and Defendant violated ERISA  
2 regulations for disability claims reviews. In sum, Plaintiff asserts Defendant's  
3 denial of Plaintiff's claim was arbitrary and capricious, an abuse of discretion, and  
4 in violation of its own policy.

## 5 FINDINGS OF FACT

6 Having reviewed the administrative record de novo, the Court makes the  
7 following findings of fact, pursuant to Rule 52(a)(1):

8 1. The Court gives full credit to Plaintiff's treating physician Dr. Bacon  
9 and his opinions regarding her disability, restrictions, and limitations. He was the  
10 only doctor involved who examined Plaintiff and reviewed all of the records  
11 available to him. Through several visits, records of Plaintiff's ongoing pain and  
12 treatment of her diagnosed conditions, and his own medical expertise, his opinion  
13 is the most qualified in considering Plaintiff's condition and abilities. The Court is  
14 not affording Dr. Bacon any special deference as Plaintiff's treating physician;  
15 rather, his opinions come well-supported by the medical records and facts provided  
16 in the administrative record. *See Black & Decker Disability Plan v. Nord*, 538 U.S.  
17 822, 825 (2003).

18 Specifically, Dr. Bacon noted Plaintiff's description of her limitations and  
19 pain remained consistent through his care of her and review of her records  
20 following her surgery. He described her as having a "permanent disability," and  
21 noted her restrictions and limitations included a maximum of four hours on her feet  
22 during an eight-hour workday, a maximum of 20 minutes use of her right hand  
23 with a 180-minute break; missing more than four days a month for pain; and a  
24 limited ability to grasp or lift with her damaged right hand.

25 2. The Court gives full credit to the Social Security Administration  
26 decision by Judge Rolph, which declared Plaintiff disabled under the Social  
27 Security Act and found based on her condition, age, education, and past relevant  
28 work, her skills "do not transfer to other occupations" and "there are no jobs in the

1 national economy that [Plaintiff] could perform.” The restrictions on her right hand  
2 severely limited her ability to work in any job, and her allegations of pain and of a  
3 disability remained consistent with her medical records and supported by the  
4 medical evidence.

5 The Court finds significant that Plaintiff qualified for SSA benefits in the  
6 same months Defendant was evaluating Plaintiff’s condition and ultimately denied  
7 her LTD benefits under its Policy. Defendant claims to have considered the SSA  
8 decision in full, as noted in its November 3, 2023, letter denying Plaintiff’s appeal.  
9 However, its denial letter fails to adequately explain why it departed from Judge  
10 Rolph’s assessment of Plaintiff’s ability to work full time and simply states the  
11 SSA benefits decisions is “not determinative of entitlement to benefits under the  
12 specific terms and conditions of [the Policy].” Defendant claims it relied on  
13 records made after September 2021, which would not have been considered by  
14 Judge Rolph. However, Judge Rolph held the hearing on Plaintiff’s disability  
15 application on June 23, 2023, and considered an MRI from 2022, which he noted  
16 in his SSA decision. This indicates he did consider records after September 2021.  
17 Further, Plaintiff’s condition did not meaningfully change from September 2021 to  
18 Defendant’s final rejection of her LTD benefits in November 2023.

19 The SSA decision is not binding on Defendant’s own decision; however, the  
20 failure to meaningfully address Judge Rolph’s findings “raises questions about  
21 whether [Defendant’s] adverse benefits determination was the product of a  
22 principled and deliberative reasoning process.” *Montour v. Hartford Life &*  
23 *Accident Ins. Co.*, 588 F.3d 623, 635 (9th Cir. 2009) (citations omitted).

24 3. The Court rejects the opinions set forth in Dr. Layno-Moses’  
25 September 8, 2023, report and October 10, 2023, addendum. Despite Defendant  
26 having the SSA decision in its possession, Dr. Layno-Moses did not reference  
27 Judge Rolph’s analysis of Plaintiff’s medical records and his final decision finding  
28 her disabled. Confusingly, she also states no restrictions and limitations were

1 recommended by treating providers, but she referred to Dr. Bacon’s records  
2 extensively. Dr. Bacon noted restrictions on Plaintiff’s use of her right hand and  
3 how many hours she could be on her feet during a workday. Further, Dr. Layno-  
4 Moses wrote Plaintiff could stand frequently (in conflict with Dr. Bacon’s  
5 assessment, which the Court has fully credited), and she could use her right hand—  
6 her dominant hand—for fine manipulation and simple and firm grasping only  
7 occasionally. Yet, this supported her conclusion that Plaintiff could return to work  
8 full time.

9       4. The Court also finds significant that none of the doctors or experts  
10 hired by Defendant examined Plaintiff. Defendant is not required to conduct its  
11 own in-person examination. *See Muniz v. Amec Const. Mgmt., Inc.*, 623 F.3d 1290,  
12 1296 (9th Cir. 2010); *see also Nicula v. First UNUM Life Ins. Co.*, 23 Fed. App’x  
13 805, 807 (9th Cir. 2001) (“There is no absolute requirement of an independent  
14 medical examination.”).

15       However, none of those doctors or experts Defendant used in Plaintiff’s case  
16 reviewed all of the medical records available to Defendant. Dr. Layno-Moses did  
17 not discuss Judge Rolph’s decision and contradicted the findings of Dr. Bacon. Dr.  
18 Barreto did not discuss Dr. Bacon’s questionnaire, and despite finding that Plaintiff  
19 was not embellishing the description of her pain and that her symptoms were  
20 permanent, he still concluded she could work full time with a disabled dominant  
21 hand. This again calls into question how thoroughly Defendant looked at Plaintiff’s  
22 benefits determination. *See Montour*, 588 F.3d at 634.

23       5. Finally, the Court finds Defendant’s conclusion that Plaintiff did not  
24 qualify for LTD benefits under the Policy because she could perform an  
25 occupation other than her “own occupation” unsupported by the record.

26       In addition, Defendant’s denial did not provide “adequate notice” or  
27 “specific [] reasons” why it denied her claim and did not have an adequate  
28 discussion of its basis for disagreeing with the views presented by Plaintiff, the

1 views of the medical professionals such as Dr. Bacon, and the SSA decision by  
2 Judge Rolph, as required by 29 U.S.C. §§ 1133(1) and 2560.503–1(g)(1).

3 **CONCLUSIONS OF LAW**

4 Based on the Findings of Fact, the Court makes the following conclusions of  
5 law, pursuant to Rule 52(a)(1):

6 1. Plaintiff is “disabled” as defined by the terms in the Policy issued by  
7 Defendant. She cannot perform her “own occupation” as team lead at Walmart, nor  
8 “the material and substantial duties of any occupation” because she could not be  
9 reasonably fitted “by training, education, experience, age, physical and mental  
10 capacity” to work any role full time, given her condition.

11 2. Defendant’s decision to deny Plaintiff benefits was arbitrary and  
12 capricious. Plaintiff’s disabled status and inability to perform any occupation, as  
13 defined by the Policy and as supported by the administrative record, entitles her to  
14 payment of full retroactive LTD benefits. *See Demer*, 835 F.3d at 907.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion for Declaratory Judgment, ECF No. 27, is

3 **GRANTED.**

4 2. The District Court Clerk shall **enter judgment** in favor of Plaintiff  
5 and against Defendant.

6 3. If Plaintiff seeks an award of attorney's fees, the motion shall be filed  
7 on or before **February 21, 2025**.

8 4. The Clerk shall close this file except for filings related to fees and  
9 costs.

10 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter  
11 this Order, to provide copies to counsel, and to **close** the file.

12 **DATED** this 21st day of January 2025.



16 Stanley A. Bastian

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18 Stanley A. Bastian  
19 Chief United States District Judge  
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